IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Raghuvir. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 767/2002
against the order dated 21-8-2002 passed
by the Judicial Magistrate, Sujangarh, in
Criminal Misc. Case No. 159/2001.

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Date of Order: August 03, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.L. Khatri, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Ramesh Guleria, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 21-8-2002 passed by the Judicial Magistrate, Sujangarh, district Churu (for short, "the trial Court" hereinafter) in Criminal Misc. Case No.159/200, whereby the trial Court granted interim maintenance allowance @ Rs.2000/- per month in favour of the non-petitioner No.2 and against the petitioner.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

It is contended by the learned counsel for the

petitioner that the trial Court fell in error in awarding such an exorbitant amount of interim maintenance without ascertaining the income of the petitioner. The petitioner categorically came with the plea that earlier he was residing at Kolkatta but for the last six months from the date of filing the reply, he has been residing in Rajasthan and due to number of cases instituted by the non-petitioner No. 2 against him, he is residing in the area to attend the cases without there being any source of income. The petitioner also stated in the reply that the non-petitioner No.2 is an employee in Mahila Mandal, Ladnu and earning Rs.1500/- per month.

From the perusal of the impugned order, it nowhere appears that the Court below has considered these aspects of the matter. Without taking into consideration the monthly income of the non-petitioner No.2, which is obvious from the reply of the petitioner that the non-petitioner No.2. is earning Rs.1500/- per month, the trial Court straightway granted interim maintenance of Rs.2000/- per month to the non-petitioner No.2, which appears to be unreasonable. In this view of the matter, the matter needs to be remanded to the trial Court for passing a fresh order considering the material placed before it by the parties.

In the result, the criminal miscellaneous petition is allowed. The impugned order dated21-8-2002 passed by the

trial Court in Criminal Misc. Case No. 159/2001 is set aside and the matter is remanded to the trial Court to decide the application filed by the non-petitioner No.2 afresh in accordance with law. The stay petition also stands disposed of.

(H.R. PANWAR), J.

mcs